

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of JUNE LOUISA CUMMIN,
Deceased.

EDWARD MURPHY, Personal Representative of
the Estate of JUNE LOUISA CUMMIN,
Deceased,

Petitioner-Appellee,

v

BETH A. HEGYI,

Respondent-Appellant.

FOR PUBLICATION
September 9, 2003
9:15 a.m.

No. 235495
Clare County Probate Court
LC No. 00-013321-SE

Updated Copy
November 7, 2003

Before: Schuette, P.J., and Sawyer and Wilder, JJ.

WILDER, J.

Respondent Beth A. Hegyi appeals by right the probate court's judgment ordering her to pay into the estate of decedent June L. Cummin the funds respondent received from renting and selling real property previously owned by decedent respondent's mother. We reverse and remand.

I. Facts and Proceedings

In June 1992, decedent executed a durable power of attorney that conferred on respondent the authority to "lease, sell, assign, and convey interests in real or personal property of any kind now or hereafter owned by [decedent] on such terms and agreement as said attorney-in-fact may solely and discretionarily determine" On the same day, decedent executed a will that named respondent as her estate's personal representative and devised the residue of her estate to her children, respondent and petitioner, Edward Murphy. Decedent's will named petitioner as the alternate personal representative.

Around the same time, decedent moved into respondent's home and later moved into a mobile home that she purchased and located next to respondent's residence.

Approximately sixteen months later, decedent moved into a residential care facility because she needed skilled nursing care. Over the next two years, decedent's dementia, from

which she suffered intermittently before moving into the residential care facility, progressively worsened to the point that she occasionally failed to recognize members of her family. She lived in the residential care facility until her death on April 28, 1998.

Respondent and her husband testified at the bench over a period of several years, decedent repeatedly instructed respondent to transfer decedent's real estate to herself. According to respondent, decedent gave one of these instructions shortly after decedent transferred a portion of her real estate to decedent's stepdaughter's family. Decedent continued to instruct respondent to transfer the property after she moved into the residential care facility. Decedent requested, however, that when respondent transferred the property, respondent retain a life estate in the property for decedent.

On December 10, 1996, nearly two years after decedent moved into the residential care facility, respondent, acting as decedent's attorney in fact, transferred decedent's real property to herself by quitclaim deed, reserving a life estate in the property for decedent. After respondent executed the quitclaim deed, respondent rented the property and received \$3,000 in rental payments. On April 14, 2000, respondent sold the property for \$180,000.

Shortly after decedent died, petitioner inquired about receiving his share of the estate. Respondent did not disclose to him at that time that she had transferred the real estate to herself. Later, after petitioner called respondent, respondent informed petitioner that she had transferred the property to herself. On February 25, 2000, petitioner filed a petition for commencement of proceedings in the probate court and requested that he be appointed personal representative of the estate. The probate court appointed him the estate's personal representative on April 27, 2000. On July 19, 2000, petitioner filed a complaint against respondent in which he (1) alleged that respondent converted the estate's assets, (2) demanded an accounting of decedent's assets, and (3) requested that the probate court impose a constructive trust over decedent's real and personal property, including proceeds from the sale or rental of the real property. During opening arguments at the trial, petitioner argued that respondent obtained ownership of the real property by exerting undue influence over decedent.¹

In its written opinion, the probate court determined that decedent had not been unduly influenced when she executed the power of attorney. The probate court also found that although respondent and her husband credibly testified that decedent wanted respondent to have the property, respondent did not make the transfer until several months after decedent became mentally unsound and respondent engaged in behavior that was inconsistent with merely wanting to fulfill decedent's wishes, such as misleading petitioner concerning the status of the property. Accordingly, the probate court concluded that respondent breached her fiduciary duty, arising from her status as decedent's attorney in fact, to refrain from self-dealing. The probate court held

¹ Petitioner did not plead undue influence in his complaint, but raised the issue in his motions for summary disposition before asserting it at trial. Respondent requested a directed verdict immediately following petitioner's opening statement because petitioner had not alleged undue influence in his complaint. The probate court denied respondent's motion, finding that although the words "undue influence" were not specifically used, the complaint contained sufficient allegations to inform respondent of petitioner's claims.

that respondent's transfer of the real property to herself created a constructive trust in favor of the estate and that the estate was entitled to the money respondent received from renting and selling the property. This appeal followed.

II. Standard of Review

This Court reviews for clear error a trial court's factual findings and reviews de novo questions of law, including issues of statutory construction. *Thomas v New Baltimore*, 254 Mich App 196, 200; 657 NW2d 530 (2002), citing *Schroeder v Detroit*, 221 Mich App 364, 366; 561 NW2d 497 (1997).

III. Analysis

Respondent contends that the probate court erred by concluding that, despite decedent's instructions that respondent transfer the property to herself, respondent breached her fiduciary duty by transferring the property.² We conclude that the probate court erred in its legal analysis and, because the probate court's findings of fact conflict to the extent that we cannot apply them to the law governing this case, we remand for clarification and application of the law to the facts.

Respondent, as decedent's agent, owed a common-law fiduciary duty to decedent. *In re Susser Estate*, 254 Mich App 232, 235-236; 657 NW2d 147 (2002). Common-law agency principles, which generally apply to powers of attorney, permit an agent to personally engage in a transaction with the principal with "consent of the principal after a full disclosure of the details of the transaction." *Id.* at 234-235, quoting *VanderWall v Midkiff*, 166 Mich App 668, 677-678; 421 NW2d 263 (1988); *Persinger v Holst*, 248 Mich App 499, 503; 639 NW2d 594 (2001), citing *VanderWall*, *supra* at 677.

² Respondent also argues that the probate court improperly permitted petitioner to assert a claim of undue influence and that the probate court improperly denied her second motion for directed verdict, made at the close of petitioner's proofs. The probate court did not abuse its discretion by permitting petitioner to assert a claim of undue influence, in light of its accurate conclusion that respondent was reasonably informed of the claim. See *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997), citing *Dacon v Transue*, 441 Mich 315, 328; 490 NW2d 369 (1992); *Ben P. Fyke & Sons v Gunter Co*, 390 Mich 649, 658; 213 NW2d 134 (1973). Contrary to respondent's assertions, this claim was not newly asserted at trial. Petitioner raised this claim before trial during hearings on three motions for summary disposition, and, during one such hearing, the probate court characterized this case as "an undue influence case." Although respondent argued that the evidence did not support a claim of undue influence, respondent did not object to petitioner's failure to specify undue influence in the complaint.

Ordinarily, we review de novo a trial court's decision concerning a motion for a directed verdict. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003). However, respondent's argument consists of merely conclusory statements that do not meaningfully analyze this issue. Accordingly, respondent did not sufficiently brief this issue to merit our review. *Id.* at 499 (stating that a party may not "leave it to this Court . . . to . . . unravel or elaborate its argument . . ."), citing *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Certain provisions of the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, and its predecessor, the Revised Probate Code (RPC), MCL 700.1 *et seq.*, restrict the authority of fiduciaries to personally engage in transactions with the estates that they represent. These limiting provisions, however, do not apply in this case. MCL 700.1214 of EPIC prohibits self-dealing by fiduciaries, except in limited circumstances that are not present in this case.³ EPIC was in effect at the time of the proceedings in this case and, therefore, would ordinarily apply. MCL 700.8101(2)(b). However, because respondent's accrued right as owner of the property would be impaired by invalidating the transaction or imposing a constructive trust, subsection 8101(2)(d) precludes applying § 1214 to invalidate respondent's transfer of the property. See *In re Smith Estate*, 252 Mich App 120, 127-128; 651 NW2d 153 (2002).

The RPC also contained a provision prohibiting fiduciaries from "engag[ing] in a transaction . . . with the estate which he represents" without written approval of the court. MCL 700.561. However, the RPC definition of "fiduciary," which governs our interpretation of subsection 561, see MCL 700.2, does not include an attorney in fact.⁴ Accordingly, EPIC and

³ MCL 700.1214 provides:

Unless the governing instrument expressly authorizes such a transaction or investment, unless authorized by the court, or except as provided in section 4405 of the banking code of 1999, . . . a fiduciary in the fiduciary's personal capacity shall not engage in a transaction with the estate that the fiduciary represents A fiduciary in the fiduciary's personal capacity shall not personally derive a profit from the purchase, sale, or transfer of the estate's property. . . .

⁴ MCL 700.5 stated:

(1) "Fiduciary" includes a conservator, guardian, personal representative, or a successor fiduciary. Fiduciary includes a testamentary trustee until section 598 applies. Fiduciary includes a plenary guardian or partial guardian

(2) The following are fiduciaries:

(a) Conservator.

(b) Foreign personal representative.

(c) Guardian.

(d) Personal representative including an independent personal representative.

(e) Trustee, to the extent included in subsection (1).

* * *

(4) Whenever the term fiduciary is used in this act, unless otherwise specifically provided, any grant of authority to a fiduciary with respect to property

(continued...)

the RPC do not restrict respondent's common-law authority to engage in a transaction with decedent, the principal.

In the instant case, the probate court erred as a matter of law in failing to acknowledge that an agent may engage in self-dealing if the principal consents and has knowledge of the details of the transaction. Additionally, the probate court erred as a matter of law by concluding that the passage of time and the change in decedent's mental status affected respondent's authority to transfer the property. The power of attorney that decedent executed was a durable power of attorney and, therefore, was still valid after decedent became incompetent. MCL 700.5501, 700.5502. Accordingly, if decedent consented to the transaction with knowledge of its details, the timing of the transaction does not prevent its enforcement.⁵

However, we find it necessary to remand this case to the probate court because we cannot discern from the court's findings whether the probate court concluded that decedent freely consented to the transaction. Although the probate court found credible respondent's and her husband's testimony that decedent wanted respondent to have the property, the probate court also found that that respondent acted in a manner "incongruous with an individual who was simply attempting to comply with her mother's wishes." Additionally, the probate court's opinion referenced "changes in circumstances" that prohibited enforcing the transaction. We, however, find no evidence on the record that decedent revoked the power of attorney or changed her mind regarding the disposition of the property after instructing respondent to transfer it. Accordingly, we remand this case to the probate court for application of the foregoing legal principles to the facts of this case as the probate court finds them.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

Sawyer, J., I concur in the result only.

/s/ David H. Sawyer

(...continued)

is limited to a fiduciary serving as a personal representative, trustee, or conservator.

⁵ Petitioner argues that that the transfer was invalid because the durable power of attorney did not authorize respondent to make gifts. Because the probate court's opinion does not address this argument, it was not properly preserved for our review. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Regardless, this argument lacks merit. Respondent's authority to convey property encompassed the authority to convey property as a gift.